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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 505/2012

Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015)

Submitted by:	P.S.B. and T.K. (represented by counsel, Stewart Iswanffy)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	8 May 2012 (initial submission)
Date of present decision:	13 August 2015
Subject matter:	Deportation to India
Procedural issues:	Substantiation
Substantive issues:	Non-refoulement
Articles of the Convention:	3, 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 505/2012*, **

Submitted by:	P.S.B. and T.K. (represented by counsel, Stewart Iswanffy)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	8 May 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 August 2015,

Having concluded its consideration of complaint No. 505/2012, submitted to the it by P.S.B. and T.K. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention against Torture

1.1 The complainants are P.S.B. and T.K., his wife, nationals of India, born on 10 December 1971 and 31 May 1972, respectively . They claim that their deportation to India by Canada would violate article 3 of the Convention. The complainants are represented by counsel.

1.2 On 18 May 2012, in application of rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to remove the complainants to India while the communication was being considered by the Committee. On 28 May 2015, the Committee reiterated its request.

The facts as presented by the complainant

2.1 The complainants lived in a village called Sangojla, Kapurthala district, Punjab, in India. The first complainant worked at his family farm. Two of his cousins were involved in

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Abdoulaye Gaye, Claudio Grossman, Satyabhoosun Gupt Domah, Jens Modvig, Sapana Pradhan-Malla and Kening Zhang.

** The text of an individual opinion of Committee member Alessio Bruni is appended to the present decision.

an opposition political party in the early 1990s, being prominent members of the nationalist party Akali Dal (Amritsar). One of them was associated with the "human rights wing" of the party, which tried to document violations committed by the police, including detention, extrajudicial execution and torture. One of the cousins disappeared in 1998 and to date the complainants do not know his whereabouts; the other cousin was recognized as a refugee in Canada in 1999.

2.2 The first complainant also worked as secretary of his village's Sikh temple.[1] In this context, he had serious confrontations with a prominent politician, who had strong links to the Government and the police. As the politician wanted to take the Sikh temple's land, the complainant, on behalf of the Gurdwara Committee, filed a case against him and was a leading figure during proceedings.

2.3 The police threatened the first complainant and ordered him to stop actions against the prominent politician. On 29 December 2007, he was arrested, detained for several days and released only after the intervention of "some prominent personalities". During the detention, he was beaten with belts and wooden sticks while being interrogated. The police also hung him upside down from the ceiling and beat him with gun butts until he fainted.

2.4 In June 2008, he went to Thailand to raise money for the village's Sikh temple. Upon his return, he was interrogated by the police, who accused him of raising funds for militants. Afterwards, he decided to seek a judicial recourse against the police harassment. However, the police found out about this and, on 3 April 2009, the two complainants were arrested. They were subject to severe torture and the second complainant was raped while in detention.[2] They were released on 4 and 5 April 2009 after paying a substantial bribe. The complainants submit that, as a result, they suffer from post-traumatic stress disorder and present medical certificates in support thereof.

2.5 The complainants submit that, after leaving Punjab, they initially fled to the town of Pehowa, in the adjacent Indian State of Haryana. After some time, they were informed by people from their original area that the police were looking for them and that they were in great danger. Owing to their fear of persecution, they decided to move to Canada.

2.6 The complainants arrived in Canada on 17 July 2009, via the United States of America. They requested refugee status before the Immigration and Refugee Board of Canada (IRB). In April 2011, their request was rejected. The authorities pointed out that they had stayed for several days in the United States and had not applied for asylum; that they did not provide a reasonable argument for not doing so; and that it was not clear whether they had left India using their own passports. Despite the weight of documentation regarding the instances of detention and torture provided by the complainants,[3] the authorities express doubt about their claims on the grounds that the documents were mainly affidavits issued by people they knew, that false and fraudulent documents were widespread

[1] The complainants submit a copy of an authorization letter to the first complainant by the priest of the Sikh temple authorizing him to represent the temple in proceedings related to a land dispute.

[2] The complainants submit medical certificates issued by the Nirmala Mission Hospital in India to evidence the injuries they suffered while in detention.

[3] The complainants presented affidavits from: a cousin of the first complainant, confirming that he had been called three times for questioning by the police about the couple and that the police had conducted raids looking for them; a municipal councillor from Nahal, confirming continuous police raids looking for the couple and that he was personally subjected to abuse; a neighbour, confirming that he had been questioned on numerous occasions and harassed while the police was looking for the couple; the president of the Sikh temple in the village, confirming that he had been personally interrogated and threatened in an attempt to make him reveal the complainants' whereabouts; and a municipal councillor from Sangojla confirming continuous police raids looking for the couple.

and easily obtainable in India and that they were not able to explain clearly how they obtained such documentation. The authorities also stated that Akali Dal, the first complainant's party, was legal in India and that, even if the complainants' claims had been deemed credible, they had alternatives for relocation inside India.

2.7 The complainants filed an application for judicial review of the IRB decision. On 31 August 2011, the Federal Court dismissed the application for leave and judicial review. They filed an application for pre-removal risk assessment (PRRA). On 12 March 2012, that application was dismissed. The PRRA officer considered that the complainants did not provide new evidence (other than the documentation submitted to the IRB) that would meet section 113 (a) of the Immigration and Refugee Protection Act and that the assessment of the evidence did not show they would be at risk if returned to India. On 13 March 2012, the complainants also filed an application for residence on humanitarian and compassionate grounds. In April 2012, the application was dismissed. On 15 May 2012, the Federal Court dismissed the motion for a stay of execution of their removal order, scheduled for 18 May 2012.

2.8 The complainants argue at length that the PRRA is not an effective remedy in Canada. They submit that the main evidence of the risk of torture or other human rights violations is not examined by the decision maker; that the PRRA officers appear to slavishly follow whatever decision was rendered at the IRB and not to exercise any independent judgement; that there is political line of refusal of many Sikh torture victims from India, and generally a lack of access to a valid legal recourse in Canada. They also claim that the Federal Court's decisions in this case illustrates the lack of access to an effective remedy, since the Court rejected their application on the basis that they were alleging the same risks as they did before the IRB.

The complaint

3.1 The complainants argue that the denial of refugee status by the State party and their potential deportation, together with the circumstances surrounding their situation in Punjab before their departure from India, put them at risk of torture or cruel or other inhuman or degrading treatment in violation of article 3 of the Convention. They maintain that the Canadian authorities did not assess adequately the risk they would be subject to if returned to India. They also maintain that the authorities arbitrarily failed to consider the weight of documentation provided in support of their request, including two reports from the Khalra Mission Committee and from Brijinder Singh Sodhi of the Sikh Human Rights Group that detailed the current danger they may face in India, without even providing an explanation of why the reports were not taken into consideration.

3.2 The complainants also maintain that the authorities failed to take into account the factual, historical context of human rights abuses against active Sikhs and the culture of impunity within the Punjab Police. For instance, in 1993, a young lawyer, his wife and 2-year-old child were abducted by the police and murdered because the lawyer had represented suspected militants before the courts. Similar cases have taken place since then; in 1999, a commission was created to receive and investigate such cases. In June 2005, the Head of Akali Dal made a declaration in favour of the independence of Punjab and subsequently was detained and tortured severely for several weeks. Moreover, prominent non-governmental organizations, such as Amnesty International and Human Rights Watch, have raised questions regarding the human rights record of India in Punjab.

State party's observations

4.1 On 16 November 2012, the State party submits that the complainants are Indian citizens who arrived in its territory on 14 July 2009. The complainants applied for refugee protection on 17 July 2009, alleging that they were at risk of torture, persecution, and/or

extrajudicial execution by police in Punjab, India, owing to the first complainant's leadership role within his local Sikh community in Punjab, and the belief of certain authorities that the complainants have family or associational connections with Sikh militants.

4.2 In April 2011, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of the State party determined that the complainants were neither refugees nor persons in need of protection. The RPD concluded that the complainants were not personally credible in their claims, that they had provided insufficient objective evidence to support their claims and that they had an internal flight alternative in India. The Federal Court dismissed the complainants' application to commence a judicial review of the rejection of their application for refugee status in August 2011.

4.3 In March 2012, during the complainants' PRRA, it was determined that they were not in need of protection from removal to India. During the PRRA, it was found that the complainants had not established that there were substantial grounds to believe that they would be at risk of torture or cruel, inhuman or degrading treatment if returned to India. The Federal Court dismissed the complainants' application to commence a judicial review of the negative PRRA determination in September 2012. The complainants' application for permanent residence on the basis of humanitarian and compassionate grounds was also rejected in March 2012. The Federal Court dismissed the complainants' application for a judicial review of the rejection of the application on humanitarian and compassionate grounds in September 2012. The complainants were scheduled to leave the State party on 18 May 2012, before the State party received the Committee's request for interim measures and cancelled the deportation.

4.4 The State party submits that the Committee is only competent to consider communications that provide sufficient evidence to substantiate violations of rights protected by the Convention. The evidence will only be sufficient if it substantiates the complainants' claims on at least a prima facie basis.[4] In other words, the evidence provided by the complainants must meet a "basic level of substantiation".[5] In its general comment No. 1 (1997) on implementation article 3 of the Convention in the context of article 22, the Committee stated that it is the complainant's responsibility to establish a prima facie case for the purpose of admissibility of his or her communication, by fulfilling each of the requirements for admissibility in the Committee's rules of procedure. The State party submits that the complainants have not sufficiently substantiated their allegations with respect to article 3 of the Convention and, accordingly, the Committee should declare this communication inadmissible pursuant to rule 113 (b) of its rules of procedure, because it is manifestly unfounded.

4.5 The State party further submits that the complainants have an internal flight alternative in India. They have consistently stated that they have never been involved in political activities; they have never been high-profile Sikh militants; they flew out of New Delhi in 2009 using their own names and their own passports; the first complainant's activities on behalf of his local gurdwara appear to have ceased when he left India. More than three years later, it seems highly unlikely that any risk that might once have existed for the complainants in their village as a result of those activities would still exist there. Furthermore, given the nature of the difficulties faced by the complainants, it is highly unlikely that any risk to the complainants would exist outside of the complainants' village,

[4] See communications No. 243/2004, *S.A. v. Sweden*, decision of 6 May 2004, para. 4.5, and No. 225/2003, *R.S. v. Denmark*, decision of 19 May 2004, para. 6.2.

[5] See communications No. 242/2003, *R.T-N. v. Switzerland*, decision of 3 June 2011, paras. 6.2, 7.1 and 7.2, and No. 18/1994, *Y. v. Switzerland*, decision of 21 May 2013, para. 4.2.

and especially outside of Punjab. The complainants' relatives and their two sons continue to reside in India.

4.6 The State party notes that the complainants have not submitted to the Committee any materials that are significantly different to what was provided to multiple domestic decision makers. Since there is no evidence of arbitrariness or denial of justice in the consideration of the complainants' various domestic applications, the State party submits that the Committee should give considerable weight to the domestic decision makers' assessment of the complainants' credibility, as well as the decision makers' overall assessment of the significance of the complainants' evidence.

4.7 The State party maintains that the complainants have not provided sufficient evidence to substantiate their allegations that they were tortured in December 2007, January 2008 and April 2009. To support their allegations, the complainants rely on the following evidence: letters from doctors in Punjab; letters from a doctor in the State party; a letter from a psychologist in the State party; affidavits from residents of their village, including their village sarpanch and a local lawyer; and a letter from a lawyer based in Punjab. The first two letters are from doctors at the Nirmala Mission Hospital in Punjab. The letter concerning the first complainant states that he was admitted for medical treatment on two separate occasions: 2 January 2008 and 5 April 2009. These are the two dates on which, according to him, he was released from police detention and sought medical treatment. The letter states that, on the first occasion, he had "swollen genitals, bruises and contusions all over his body", and "was complaining of pain in the entire body". It states that he was admitted as an inpatient for one day and then received outpatient treatment for 10 more days. The letter states that, on the second occasion, he "was bearing the same types of complaints as before like cuts, bruises and abrasions on his back, arms, shoulders and legs" and that he was treated at the hospital for two days and elsewhere for a week. The State party observes that the injuries described in this letter are generally consistent with the police treatment described by the first complainant in his personal narrative.

4.8 The letter concerning the second complainant states that she was a patient at the hospital from 4-6 April 2009. The date of admission is the date when, according to her husband, she was released from police detention. The letter states that she had "lash marks, swelling and pain in [*sic*] all over her body especially in vaginal area, bruises, contusions and depression due to beating and rape in police custody". The letter states that after being released from the hospital, she was treated at home for one week. The State party observes that the injuries described in this letter are also generally consistent with the police treatment described by the complainants. The State party further observes that this letter from a medical doctor not only describes the physical condition but seems to affirm the source of the condition as being the police. Although these letters are both generally consistent with the complainant's claims, the State party submits that the letters are of limited reliability and should therefore be given little weight. The letters are dated 25 February 2011, almost two years after the most recent events described; they are not contemporaneously prepared medical records or notarized affidavits. Neither of the doctors who signed the letters claims to have based his or her statements on consultation of any medical records that were prepared at the time of the treatment described. In fact, the complainants have not submitted any objective, contemporaneous documents attesting to their medical treatment or made any claim that such documents exist. In particular, the doctor who signed the letter concerning the first complainant does not claim to have personally provided or witnessed the described treatment, and the letter does not identify who treated the patient. The letter, therefore, does not even explain the source of the information being conveyed. The author of the letter concerning the second complainant, in contrast, claims to be the doctor who treated her. However, the author does not indicate whether she has personal knowledge of the events that created the physical symptoms or is relying on the statements of the patient for that information. Further, the RPD decision

maker considered these letters in assessing the complainants' claims for protection and the latter gave little weight to the doctors' letters, and indeed was of the opinion that they were likely fraudulent. The State party submits that the Committee should defer to the RPD conclusion, as it was taken on the basis of all the evidence before the RPD, including the opportunity to question and observe the complainants and form an impression of the credibility of their claims and their supporting documents.

4.9 Regarding the letters from a doctor in Canada, these are dated 5 March 2011 and 21 March 2011. The letter concerning the first complainant states that he is being treated for post-traumatic stress disorder, depression and chronic pain and that at "his last visit [he] continued to report poor mood, poor sleep with nightmares, flashbacks, poor concentration, and poor energy", along with severe neck pain and generalized myalgia. The letter concerning the second complainant states that she is being treated for post-traumatic stress disorder and depression, and that at "her last appointment she reported depressed mood, poor appetite, poor interest and decreased energy" along with a disrupted sleep pattern. It does not mention any physical injuries. The State party submits that these letters should be given little weight in assessing whether the complainants have substantiated their claims of past torture in Punjab. Even though the injuries described are generally consistent with the complainants' account of past torture, the letters do not specifically corroborate the complainants' particular account. These injuries are consistent with any number of past hardships that could have been experienced by persons who seek protection. The injuries are consistent with some kind of trauma, but they do not establish in any way that the complainants suffered torture as defined by article 1 of the Convention. The State party observes that the letters themselves are noticeably circumscribed in their conclusions as to which of the claimed injuries are consistent with the complainants' account of past torture. The first letter says that "his PTSD and depression are consistent with a previous trauma such as the torture he describes", but does not mention whether the *physical* injuries are consistent with the alleged previous trauma. In contrast, the second makes no comment on whether any of her symptoms or conditions are consistent with torture. The State party notes that the RPD decision maker considered the medical letters as well and gave them little weight and that the Committee should take the same approach.

4.10 The complainants have also submitted eight affidavits prepared in 2011. The State party submits that the affidavits are generally not reliable, because most of the affiants do not claim to have direct knowledge of the events they describe and that, for this reason, the RPD or PRRA officials who considered these documents gave them little weight, or excluded them altogether. The State party submits that the Committee should also give these affidavits little weight.

4.11 The State party further submits that, even if the complainants' allegations that they were subjected to torture in the past are accepted as proven, they have not provided sufficient evidence to substantiate a personal risk of torture in the future, upon being returned to India. They left Punjab over three years ago. Members of their family, including their parents and siblings, remain there. The complainants have not claimed to be political activists, let alone high-profile Sikh militants. Since leaving India, the first complainant does not appear to have continued his activities on behalf of his village gurdwara. On the basis of these facts, it is highly unlikely that any risk that might once have existed for them in their village in Punjab would still exist upon their return.

4.12 The complainants have not submitted any credible evidence to demonstrate that they are at risk of specific police attention in Punjab at this time. The complainants have not submitted any objective documentary evidence, such as a warrant for their arrest, to substantiate the claim that the police continue to pursue them. For their PRRA, the complainants submitted a number of affidavits from residents of their home village in Punjab, indicating that, after the complainants left India, the local police harassed village

residents and questioned them as to the complainants' whereabouts. However, the affidavits do not specifically corroborate the allegation that police in Punjab continue to search for the complainants: the PRRA officer, after closely examining the affidavits, noted that none of the affidavits provide any dates for the incidents of harassment described. The State party submits that the affidavits from village members are of limited probative value in assessing whether the police continue to pursue the complainants and the Committee should therefore give the affidavits little weight on this issue.

4.13 The complainants also provided a letter from the General Secretary of the Khalra Mission Committee, dated 14 December 2011, making similar allegations that the police continue to search for the complainants. However, the author of the letter does not claim to base these allegations on any direct knowledge of the alleged continuing police activities, does not clearly explain how his organization's unnamed investigators learned of the alleged continuing police activities, provides no dates for the events that form the basis for the allegations and provides no other corroborating materials or information. The State party submits that the Committee should take the same approach as the PRRA officer who assessed the letter and give it little weight.

4.14 The State party submits that a risk of arrest does not in itself establish a violation of the Convention.[6] The complainants' assertions that they are of continued interest to the local police in Punjab and that they are at risk of arrest there do not in and of themselves support a finding of a violation of article 3, even if such assertions are found to be supported by the documentary evidence, which is of questionable strength.

4.15 The State party further notes that a risk of psychological harm if returned to India does not establish a violation of article 3. While letters from a Canadian doctor state that, in his opinion, the complainants "would suffer psychologically and possibly physically if sent back to India", the author provides no basis for this opinion. The State party submits that it can be reasonably assumed that the potential harm referred to relates to mental or physical harm which might flow from the fact of return and not harm from State actors, such as the police in India. The State party submits that these letters should be given no weight in assessing whether the complainants face a future risk of torture upon return to Punjab.

4.16 The complainants submitted information about cousins of the first complainant who were allegedly involved in Sikh politics in Punjab in the 1990s. One of the cousins was recognized as a refugee in the State party in 1999; the other has allegedly not been seen since 1998. By describing the past experiences of his cousins, the complainant has sought to strengthen the allegations of a future risk of torture if returned to Punjab. Even assuming that all of the complainant's factual allegations with respect to the cousins are true, these allegations cannot, on their own, establish a personal risk of torture for the complainants in 2012. The described incidents occurred in the late 1990s; the complainants have provided no evidence to substantiate that their cousins are still being sought by the authorities in Punjab. Overall, the State party submits that the complainants have provided no credible evidence to connect their allegations of future risk to the alleged experiences of their cousins.

4.17 Finally, the complainants submitted a letter from a lawyer based in Punjab, dated 10 February 2012, which concludes with broad statements about the risks that the complainants would face upon return to India. The State party observes that the author does not have direct knowledge of any of the events at issue in this communication; he appears to have based his conclusions entirely on second- or third-hand information, and provides

[6] See communications No. 355/2008, *C.M. v. Switzerland*, decision of 14 May 2010, para. 10.9; No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5; and No. 65/1997, *I.A.O. v. Sweden*, Views adopted on 6 May 1998, para. 14.5.

no corroborating material and little explanation for his conclusions. It should also be taken into account that the lawyer who prepared the letter was hired to do so by the first complainant's brother-in-law. The State party submits that the letter should be given no weight in assessing whether the complainants face a future risk of torture upon return to Punjab.

4.18 The State party submits that, since the complainants have not established that they would be at personal risk if returned to India, it is unnecessary for the Committee to go on to consider the general human rights situation in India. In *V.N.I.M. v. Canada*,[7] the Committee found that where complainant's allegations are neither credible nor corroborated by objective evidence, it is not necessary to examine the general human rights situation in the country of origin.[8] In the event that the Committee considers it necessary to consider the general human rights situation in India, the State party submits that the domestic decision makers carefully considered the evidence of country conditions submitted by the complainants in support of their allegations of risk. With respect to the evidence submitted to the RPD, there was no link between much of this evidence and the complainants and, therefore, the decision makers were unable to accord it significant probative value in terms of assessing the complainants' personal risk.

4.19 The State party further submits that objective evidence concerning conditions in India does not corroborate the complainants' allegations that they face a real risk of torture. The general human rights situation for Sikhs in Punjab and India has improved over the past decade to the extent that there is no specific or particular risk of torture or other ill-treatment at the hands of Indian police in relation to most individuals, like the complainants, who are not high-profile Sikh militants.[9] The State party refers the Committee to information from country reports indicating that the situation for Sikhs is now stable and that only individuals who are considered to be high-profile militants may still be at some risk in Punjab.[10] The complainants do not fall within the category of high-profile militants

4.20 The State party submits that the fact that human rights violations against Sikhs have occurred in Punjab in the past and that impunity for some of these crimes may continue does not support the complainants' allegation that they would be subjected to torture in 2012. Without a credible connection between the complainants themselves and the human rights violations that have occurred in Punjab, the past occurrence of such abuses in this region is not relevant to the complainants' personal situations. The State party submits that the complainants' allegations of risk, in the light of their personal situation and the current conditions in India, have not been substantiated.

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[7] Communication No. 119/1998, *V.N.I.M. v. Canada*, decision of 12 November 2002.

[8] Ibid., paras. 8.4-8.5.

[9] The State party submits that recent country reports on human rights conditions in India make no mention of Sikhs in Punjab. See, e.g., Amnesty International, *Annual Report 2012: The state of the world's human rights* (chap. on India); United States of America, Department of State, *Country Reports on Human Rights Practices for 2011: India*. Sources consulted by the IRB report that the treatment of Sikhs involved in militant activities remains an issue of concern. See Canada, Immigration and Refugee Board of Canada, *India: Treatment of Sikhs in Punjab within a contemporary historical context (2005-2007)* (2007). This view is supported by research conducted by the United States Bureau of Citizenship and Immigration Services in 2003, which reported that "human rights activists in Punjab no longer face the often severe repression that was common during the Sikh separatist insurgency in the 1980s and early 1990s, though they are at times subjected to intimidation and harassment" (see United States, Bureau of Citizenship and Immigration Services, *India: Information on treatment of human rights activists in Punjab* (2003)

[10] See United States, Department of State, *International Religious Freedom Report 2010: India* (Bureau of Democracy, Human Rights and Labour, 2010).

4.21 The State party maintains that it would not be removing the complainants to Punjab in particular, but to India, where the complainants can avail themselves of an internal flight alternative. Even if the complainants had demonstrated, on a prima facie basis, that they faced a personal risk of torture if returned to Punjab, they still have not provided sufficient substantiation for the allegation that they would be unable to reside free of personal risk in another part of India. The complainants do not have a high profile in Punjab; they do not claim to have been involved in local politics or to have engaged in militant or criminal terrorist activities. The first complainant's activities in support of his local gurdwara were not sufficient to have made him a "high-profile" Sikh activist. The RPD referred to an assessment by the Home Office of the United Kingdom of Great Britain and Northern Ireland, as well as Canadian court decisions, to support its determination that "low-profile Sikhs, such as these claimants, who were not actively involved in criminal terrorist activities usually have a viable IFA [internal flight alternative] in their country".[11] In particular, the State party refers the Committee to research materials relied upon by the RPD member concerning the ability of Sikhs who do not have a high profile to relocate within India. These materials indicate that Sikhs are located in every state in India; that, upon relocation, Sikhs do not need to register with local police unless they are on parole; that Sikhs are unlikely to have difficulties in finding employment outside of Punjab; and that only a high-profile person would not be able to move elsewhere. There is no reason to believe that someone who has had problems with local police in Punjab would not be able to reside elsewhere in the country.[12]

4.22 The State party maintains that the complainants have not provided sufficient evidence that they would be of any special interest to State authorities if returned to a region of India outside of Punjab. The complainants have asserted that after leaving Punjab, they initially fled to the town of Pehowa, in the adjacent Indian State of Haryana. While in Pehowa, they claim to have learned that the police were searching for them. However, there is no evidence to support this claim. Furthermore, even if the assertion of police interest in Pehowa is accepted as true, this does not substantiate the claims that the complainants have no viable internal flight alternative; that they faced a substantial and personal risk of torture in Pehowa in 2009; that such a risk would still exist upon return in 2012; and that the complainants have no places other than Pehowa to safely reside in India. The complainants flew out of New Delhi when they left India on a commercial airline using their own passports and they have never made any allegation that they faced police harassment there.

4.23 During the complainants' RPD hearing, the first complainant testified that the Punjabi police had disseminated data concerning the complainants to police across India. But he could not explain how he knew this and provided no evidence to support this allegation. He also testified at another point in the hearing, in response to a question from the RPD decision maker, that there were no "facts or circumstances" that would make residing in Mumbai or Kolkata unreasonable. The RPD member concluded that the local police in Punjab had neither the motive nor the capability to inform police forces across India about the complainants. His conclusion was based on objective evidence about the information-sharing capacities of local Indian police forces and central authorities and the relatively low profile of the complainants. The complainants also claimed that a certain politician would pursue them if they returned to India, even if they returned somewhere outside of Punjab. However, the complainants were unable to suggest a motive for the politician to continue to pursue them more than three years after they left the village and ended activities on behalf of the village's gurdwara. The complainants provided no evidence to support the allegation that the politician would have sufficient national

[11] See RPD decision, para. 29.

[12] Ibid., para. 30, citing an assessment by the Home Office of the United Kingdom.

influence in India to pursue them outside of Punjab. They have also never provided specific, corroborated information about what positions of authority are currently or have been occupied by the politician. The documents submitted suggest that he is the former sarpanch of their village. The State party notes that although the complainants' supplemental submission refers to the politician as a "congressman", in the Indian political context this term likely refers to his partisan affiliation and not to any official position. The RPD member concluded that the complainants had not established his national influence and that, even assuming he could locate the complainants if they returned to India, he would likely have no motive to pursue them. The State party maintains that, while the complainants may face some hardship should they not be able to return to Punjab, the Committee has maintained in previous cases that such hardship would not amount to torture and therefore their removal to India would not be in violation of the Convention.[13]

4.24 The State party notes that the Committee has consistently been of the view that it is not the role of the Committee to weigh evidence or reassess findings of fact made by domestic courts, tribunals or decision makers, unless the domestic decision makers' evaluations were arbitrary or amounted to a denial of justice: "it is for the appellate courts of States parties to the Convention to examine the conduct of a case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the officers had clearly violated their obligations of impartiality".[14] Generally speaking, other than in exceptional circumstances, the factual determinations and findings of credibility made by domestic decision makers are to be given considerable weight by the Committee. The State party respectfully submits that the Committee should do so in this communication.

4.25 The State party objects to and expressly denies the complainant's allegations that the main evidence of risk of torture or other human rights violations was not examined by the decision maker; that the PRRA officers appear to slavishly follow whatever decision was rendered by the IRB and not to exercise any independent judgement; and that there is a political line of refusal of many Sikh torture victims from India and, generally, a lack of access to a valid legal recourse in Canada. To assess the complainants' applications for protection, the RPD heard oral evidence, examined witnesses and was able to assess credibility and reliability at first hand. The RPD is an independent, quasi-judicial, specialized tribunal. Individuals seeking protection are assisted by legal counsel as well as an interpreter. RPD decision makers receive comprehensive, ongoing training. In assessing the complainants' claims for protection, the RPD member gave full consideration to the complainants' claims and all the documentary evidence that they provided, including the letters from doctors in India and Canada. The complainants' PRRA application was considered by a specially trained officer who considered any new evidence or changes in country conditions and concluded that the complainants were not at risk of torture in India. The PRRA officers have access to the most recent and authoritative information on human rights developments around the world. The State party notes that the independence and

[13] See communications No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, para. 11.5; No. 245/2004, *S.S.S. v. Canada*, Views adopted on 16 November 2005, para. 8.5; and No. 298/2006, *C.A.R.M. v. Canada*, decision of 18 May 2007, para. 8.9.

[14] See communications No. 282/2005, *S.P.A. v. Canada*, Views adopted on 7 November 2006, para. 7.6; No. 148/1999, *A.K. v. Australia*, Views adopted on 5 May 2004, para. 6.4; No. 223/2002, *S.U.A. v. Sweden*, decision of 22 November 2004, para. 6.5; and No. 135/1999, *S.G. v. Netherlands*, decision of 12 May 2004, para. 6.6. See Human Rights Committee, communications No. 1455/2006, *Kaur v. Canada*, decision of inadmissibility of 30 October 2008, para. 7.3; No. 1534/2006, *Pham v. Canada*, decision of inadmissibility of 22 July 2008, para. 7.4; No. 891/1999, *Tamihere v. New Zealand*, decision of inadmissibility of 15 March 2000, para. 4.4; and No. 728/1996, *Paul v. Guyana*, Views adopted on 1 November 2001, paras. 6.3 and 9.3.

impartiality of PRRA officers and the PRRA programme have been considered in detail and have been confirmed by Canadian courts, including the Federal Court of Appeal.[15]

4.26 The State party submits that the Federal Court did not grant leave to the complainants for a judicial review of the RPD decision. The Federal Court's decision not to grant leave was consistent with the RPD determination that, even if the complainants had been found credible in respect of their claims of past torture, they nevertheless have an internal flight alternative given the situation in India at present. The PRRA officer provided detailed reasons in his decision for either refusing to consider certain evidence or ascribing little weight to the evidence. These reasons were in accordance with the statutory and regulatory rules governing the PRRA process, in particular section 113 (a) of the Immigration and Refugee Protection Act. The State party submits that the new evidence rule for this risk assessment process strikes the correct balance between fairness to the person and sufficient discretion to decision makers to reject evidence that was available to the claimants at the time of the original decision on their claim for protection but which, without good reason, was not provided to the RPD. The rule recognizes the practical need to keep the second assessment prior to removal focused on any changed circumstances. The evidentiary rule allows for a fair degree of flexibility as it allows for consideration of evidence predating the RPD determination that was not reasonably available to the applicants or that the applicants could not otherwise reasonably have been expected to present at the time of the RPD refusal decision.[16] After giving careful consideration to the complainants' PRRA application and accompanying documents, the PRRA decision maker found that the complainants had provided insufficient evidence to demonstrate that they would be at risk if returned to India.

4.27 The State party submits that the complainants have not clearly identified or explained any specific examples of alleged procedural unfairness during the consideration of their various applications to domestic Canadian decision makers, let alone arbitrariness or denials of justice. Although the complainants imply in their communication that the domestic decision makers were biased and lacked independence, they do not make any specific allegations or provide any specific evidence with respect to the conduct of their own domestic proceedings. When the complainants applied to the Federal Court for leave to seek judicial review of their RPD decision, they could have raised allegations of bias and/or a lack of independence, but they did not do so. They also could have raised specific allegations of this nature in their application for leave to seek judicial review of their PRRA decision. They did not do so, however, and instead made broad systemic assertions about bias and lack of independence, similar to those contained in their communication. The complainants are simply dissatisfied with the results of their applications, and generally the Government's decision to remove them to India. The State party submits that the complainants have failed to establish, on even a prima facie basis, that the Canadian decisions in their particular case were arbitrary or in any way amounted to a denial of justice.

4.28 The State party observes that the complainants also impugned the effectiveness of applications to the Federal Court for judicial review and for stays of removal. It submits that the complainants have not provided sufficient evidence to substantiate the allegation

[15] See *Say v. Canada (Solicitor General)*, 2005 FC 739, affirmed by 2005 FCA 422, application for leave to appeal to the Supreme Court of Canada dismissed [2006] S.C.C.A. No. 48; *Nalliah v Canada (Minister of Citizenship and Immigration)*, 2005 FC 759.

[16] Section 113 (a) of the Immigration and Refugee Protection Act establishes that evidence submitted for the purpose of a PRRA must be "new evidence that arose after the rejection [by the RPD] or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection".

that they have been deprived of an effective remedy for reviewing the decision of the RPD, the PRRA, and/or decisions on applications on humanitarian and compassionate grounds, or for seeking a stay of removal. The complainants do not identify and explain any specific allegations of procedural unfairness or irregularities in their particular applications for judicial review. The complainants applied with the assistance of counsel for leave to seek judicial review of all three decisions, and in their applications they had the opportunity to raise issues with the procedure and the substance of those decisions. The State party submits that it has consistently and constantly argued that the judicial review in the Federal Court is an effective remedy. Judicial review is one key element of the State party's immigration and protection determination system, which is a blend of administrative and judicial decision-making. Judicial review has consistently been recognized by the Committee as a procedure that must be exhausted for the purposes of admissibility.[17] In several communications involving Canada, the Committee has noted that applications for leave and judicial review are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case.[18]

4.29 The State party refers to *Singh v. Canada*, where the Committee supported the complainant's position that judicial review of his negative RPD and PRRA decisions did not provide him with an effective remedy.[19] The Committee expressed the view that the State party should provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture.[20] The State party maintains that the Committee's views in *Singh v. Canada* are limited to the specific facts of that case and do not indicate a more general condemnation of the effectiveness of judicial review as a remedy. The State party understands the view of the Committee to be that the Federal Court, on the particular facts related to Nirmal Singh, failed to provide him with an effective domestic remedy.

4.30 The State party maintains that its system of judicial review by the Federal Court does provide for "judicial review of the merits", in the sense that it allows for review of both the law and the facts. It is best characterized as judicial supervision of administrative decision-making. The function of judicial review is to ensure the legality, the reasonableness and the fairness of the administrative decision-making process and its outcomes. The Federal Court reviews IRB decisions for factual errors or errors involving both facts and law, generally on a reasonableness standard, in deference to the tribunal's expertise. However, the Court may review, on a correctness standard, any aspect of the IRB

[17] See, for example, communications No. 307/2006, *Yassin v. Canada*, decision of 4 November 2009, paras. 9.3-9.4; No. 304/2006, *L.Z.B. v. Canada*, decision of 8 November 2007, para. 6.6; No. 66/1997, *P.S.S. v. Canada*, decision of inadmissibility adopted on 13 November 1998, para. 6.2; No. 86/1997, *P.S. v. Canada*, decision of inadmissibility adopted on 18 November 1999, para. 6.2; No. 42/1996, *R.K. v. Canada*, decision of inadmissibility adopted on 20 November 1997, para. 7.2; No. 95/1997, *L.O. v. Canada*, decision of inadmissibility adopted on 19 May 2000, para. 6.5; No. 22/1995, *M.A. v. Canada*, decision of inadmissibility adopted on 3 May 1995, para. 3; No. 183/2001, *B.S.S. v. Canada*, decision of admissibility adopted on 12 May 2004, para. 11.6; No. 273/2005, *T.A. v. Canada*, decision of inadmissibility adopted 15 May 2006, para. 6.3; and European Court of Human Rights, judgement of 30 October 1991, *Vilvarajah and Others v. United Kingdom*, application No. 13163/87; 13164/87; 13165/87; 13447/87; 13448/87, para. 126

[18] See communications No. 273/2005, *T.A. v. Canada*, para. 6.3, and No. 304/2006, *L.Z.B. v. Canada*, para. 6.6.

[19] See communication No. 319/2007, *Singh v. Canada*, decision of 30 May 2011, para. 8.8.

[20] Ibid., para. 8.9.

decision that involves questions of law of central importance to the legal system as a whole, and outside the IRB expertise.[21]

4.31 As to the complainants' application to the Federal Court for a stay of removal, the complainants alleged the same risks that had already been considered by several domestic decision makers, in decisions for which the Federal Court had already denied applications for leave to seek judicial review. The Court noted that "it is not the role of this Court in a stay motion to reweigh the evidence".[22] The Federal Court properly applied the well-established legal test for a stay of removal[23] and determined that the complainants had not met that test: they had not demonstrated that they would suffer irreparable harm if a stay was not granted. As the Federal Court held, "the same risks alleged and found not credible" by the RPD "cannot serve as a basis" for demonstrating irreparable harm in an application for a stay of removal.[24] The State party maintains that Federal Court judicial review is an effective remedy.

Complainant's comments and further submissions

5.1 On 6 March 2015, the complainants submit that: they have been victims of torture and rape, that they have fled a situation of impunity and great personal risk in Punjab; that they have presented "overwhelming" evidence, which was not given any weight, without an objective reason; that the PRRA process does not provide an effective recourse to ensure respect for article 3 of the Convention; that the Federal Court does not enforce compliance with article 3 of the Convention and does not provide a clear and effective recourse to victims of torture who apply for protection from deportation; and that they have exhausted the available domestic remedies within the Canadian legal system, including for a stay of deportation, which has been denied because it was based on the same fears as those expressed previously before the IRB.

5.2 The complainants submit that the medical evidence regarding the torture they suffered was rejected essentially because: they had had spent eight days in the United States; they stated that they believe they are logged in an India-wide police database; and the fact that it is possible to obtain fraudulent documents in India. The complainants refer to the affidavits that they submitted in support of their claims that they would face risk of torture upon return[25] and to the reports from human rights organizations in Punjab[26] and maintain that the above evidence show ongoing danger for them. The report of the Khalra Mission Committee, in particular, states that committee had sent an investigative team to the village of the complainants, which reported ongoing police raids and harassment of family members and village councillors in search of the couple. The affidavits also refer to the judgement of the Supreme Court of India regarding the disappearance and murder of

[21] The Supreme Court of Canada, whose jurisprudence on this point guides judicial review by all Canadian courts, has explained the "reasonableness" and "correctness" standards of review. See *Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 49.

[22] See Federal Court order dismissing the authors' application for a stay of removal.

[23] See Canada, Federal Court of Appeal, *Toth v. Canada (Minister of Employment and Immigration)* (1998), 86 N.R. 302 (To obtain a stay of removal, the applicant must establish the following three requirements: (1) there is a serious issue to be tried; (2) The applicant would suffer irreparable harm if the court refused relief; and (3) The balance of convenience favours the applicant because he will suffer the greater harm from the refusal of the stay).

[24] See Federal Court order dismissing the authors' application for a stay of removal.

[25] See footnote 3 above.

[26] Report of the Khalra Mission Committee and letter by Brijinger Singh Sodhi of the Sikh Human Rights Group, copies submitted by the complainants.

Jaswant Singh Khalra,[27] which contains extensive information regarding the human rights situation in Punjab. The complainants further refer to the Committee's decisions in *Singh v. Canada* and *Sogi v. Canada*,[28] and maintain that, similarly to the complainants in these communications, they had been targeted "by very powerful people" with the support of the police. They further submit that due weight should have been given to the letter of the psychologist David Woodbury, a specialist from an organization helping victims of torture, who diagnosed the couple with post-traumatic stress disorder.

5.3 The complainants further reiterate that they do not consider the PRRA and the proceeding on stay of deportation before the Federal Court to be sufficient legal remedies for individuals such as themselves.

5.4 The complainants also submit that the internal flight alternative, as suggested by the State party, is not an option for them because they had been targeted by "the power structure" of the Indian State and the dominant political party "that do not allow them any possibility of protection in India". They submit that they are Amritdhari Sikhs, reiterate the reasons why they believe they would be targeted if returned to India (see paras. 2.1-2.4 above), and maintain that the case is high profile "both for them and their persecutors". The complainants further refer to the guidelines on internal flight alternative of the Office of the United Nations High Commissioner for Refugees,[29] and submit reports and studies suggesting that there is no viable internal flight alternative for Sikh torture victims.[30]

5.5 The complainants submit that there is a situation of impunity in Punjab and in India for the politicians and the police, who have tortured the first complainant on two occasions and have raped the second complainant. They reiterate that their forcible return to India would expose them to risk of torture or death.

5.6 On 14 May 2015, the complainants informed the Committee that the Canada Border Services Agency had informed them that they will be deported and that they intend to challenge that decision before the Federal Court.

5.7 On 4 June 2015, the complainants submitted that the Minister of Public Safety had taken, on 19 May 2015, a decision to deport them to India and that they filed a motion for a stay of deportation to the Federal Court in Montreal, which the latter rejected on 2 June 2015. The complainants submitted that they do not wish to live in Canada illegally and, therefore, after receiving the court decision, they presented themselves at the airport and left for India on 3 June 2015.

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[27] A copy of the judgment is enclosed by the complainants, Supreme Court of India, criminal appeal No. 528 of 2009, *Prithipal Singh et v. State of Punjab & Anr.* etc.

[28] Communication No. 297/2006, *Sogi v. Canada*, decision of 16 November 2007.

[29] *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, paras. 13-14.

[30] The complainants submit copies of a report of the non-governmental organization Ensaaf, entitled *No Safe Heaven: The Myth of the Internal Flight Alternative in India for Returned Sikh Asylum Seekers* (2004); an article by Ruth Khalastchi "The Internal Flight Alternative: Additional Hurdle or Realistic Option? The United States' Approach", October 2001; and newspaper articles on the topic of internal flight alternative.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedure

6.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as deporting an alleged victim, undermines the protection of the rights enshrined in the Convention.[31]

6.2 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 18 May 2012, and reiterated on 25 May 2015, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering the action by the Committee futile and its findings without effect.

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes the State party's submission that the present communication is manifestly unfounded and thus inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure. The Committee, however, considers that the communication has been substantiated for the purposes of admissibility, as the complainants have sufficiently detailed the facts and the basis of the claim for a decision by the Committee.

7.3 The Committee further recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case, the State party has recognized that the complainants have exhausted all available domestic remedies. The Committee finds no further obstacles to the admissibility; accordingly, it declares the communication admissible and proceeds with its examination on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

[31] See communications No. 444/2010, *Abdussamatov and others v. Kazakhstan*, decision of 15 November 2011, paras. 10.1-10.2; No. 482/2011, *R.S. and others v. Switzerland*, decision of 21 November 2014, para. 7; and No. 538/2013, *Tursunov v. Kazakhstan*, decision of 8 May 2015, paras. 7.1-7.2.

8.2 The issue before the Committee is whether the expulsion of the complainants to India would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to India. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return; additional grounds must be adduced to show that the individual concerned would be personally at risk.[32] The Committee notes the State party's argument that the human rights situation in Punjab and in India has improved and stabilized in recent years. It observes, however, that reports submitted both by the complainant and the State party confirm, inter alia, that numerous incidents of torture in police custody continue to take place, and that there is widespread impunity for perpetrators. The Committee observes that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person was in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned was personally at risk.[33]

8.4 The Committee recalls its general comment No. 1, that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion; however, the risk does not have to meet the test of being highly probable, but it must be personal and present. In that regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee notes the State party's submission that it should accord the requisite weight to the conclusions of the RPD and the IRB, which had conducted a thorough assessment of the risks alleged by the complainants and that the complainants' allegations did not warrant any reassessment of the facts and evidence by the Committee. In this respect, the Committee recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided under article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 The Committee notes that the complainants claim to have been tortured in the past. The Committee, however, notes that the responsible organs of the State party had thoroughly evaluated all the evidence presented by the complainants and found it to lack credibility. The Committee further observes that, even assuming that the complainants had been tortured while in pretrial detention, the alleged instances of torture did not occur in the recent past.[34]

8.6 The Committee further notes that, even if it were to accept the claim that the complainants were subjected to torture in the past, the question is whether they currently run a risk of torture if returned to India. It does not necessarily follow that, several years

[32] See communications No. 282/2005, *S.P.A. v. Canada*; No. 333/2007, *T.I. v. Canada*, decision of 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision of 12 November 2010.

[33] See communications No. 302/2006, *A.M. v. France*, decision of 5 May 2010, para. 13.2; No. 282/2005, *S.P.A. v. Canada*, para. 7.1; and No. 319/2007, *Singh v. Canada*, decision of 30 May 2011, para. 8.2.

[34] See, for example, communication No. 431/2010, *Y. v. Switzerland*, decision adopted on 21 May 2013, para. 7.7.

after the alleged events occurred, they would still currently be at risk of being subjected to torture if returned to their country of origin. The Committee has also noted the claim that the complainants would be tortured if deported to India on account of their perceived affiliation with the Sikh militants and a land dispute between the Sikh temple and a local politician. The Committee, however, notes that the complainants did not present any documentary evidence that there were any criminal proceedings pending against them or that the Indian authorities had issued an arrest warrant for them. On the contrary, they were able to freely leave the country. The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the Committee's opinion, the complainants have not discharged this burden of proof.[35] Further, the complainants have not demonstrated that the authorities of the State party, which considered the case, have failed to conduct a proper investigation.

8.7 The Committee therefore concludes that the complainants have not adduced sufficient grounds for believing that they would run a real, foreseeable, personal and present risk of being subjected to torture upon return to India.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainants removal to India by the State party would not constitute a breach of article 3 of the Convention. However, the removal of the complainants to India in June 2015, notwithstanding the interim measures requested by the Committee, constitutes a violation of article 22 of the Convention.

[35] See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision of 11 November 2013, paras. 10.5 and 10.6.

Appendix

Individual opinion of Committee member Alessio Bruni

1. It is my opinion that the words "the State party seriously failed in its obligations under article 22 of the Convention" appearing in paragraph 6.2 of the Committee's decision on the present communication, should be replaced by the words "the State party raised serious doubts about its willingness to implement article 22 of the Convention in good faith".

2. Similarly, the words "constitutes a violation of article 22 of the Convention" appearing in paragraph 9 of the Committee's decision, should be replaced by the words "raises serious doubts about the willingness of the State party to implement article 22 of the Convention in good faith".

3. The reason for the change in the wording of the Committee's decision that I raised during the consideration by the Committee of the present communication is that interim measures requested by the Committee do not appear in article 22 of the Convention and, therefore, cannot constitute a violation of a State party's obligation under that article. They are contained in rule 114 of the Committee's rules of procedure which have been adopted by the Committee unilaterally and have not been subscribed to by the States parties. However, the non-compliance by a State party with interim measures requested by the Committee remains a clear sign of non-cooperation undermining the Committee's effectiveness of its mandate and should be clearly blamed.